

# **EXHIBIT 11**

James Murray

04/29/2005

CERTIFIED ORIGINAL  
LEGALINK BOSTON

Volume: I  
Pages: 1-153  
Exhibits: 76-99

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

-----x  
AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY,

Plaintiff,

vs. C.A. NO. 03-40266 CBS

TOWN OF NORTH BROOKFIELD,  
Defendant.

-----x  
30(b)(6) DEPOSITION OF THE TOWN OF NORTH BROOKFIELD

By its designee JAMES MURRAY

Friday, April 29, 2005

9:00 a.m.

HOLLAND & KNIGHT LLP

10 St. James Avenue

Boston, Massachusetts 02116

Reporter: Karen D. Quigley, RPR/RMR

James Murray

04/29/2005

53

1 just looking at in invoice 36 is your answer the same,  
2 the town did not question why charges during any of those  
3 months were higher than the charges when construction  
4 were ongoing?

5 A. That would be the same answer, yes.

6 MS. GRIFFIN: Let's go off the record  
7 for a minute.

8 (Off the record from 10:43 until  
9 10:50 a.m.)

10 (Documents marked for identification  
11 as Exhibit Nos. 77 through 79.)

12 BY MS. GRIFFIN:

13 Q. I've put before you, Mr. Murray, documents  
14 that have been marked Exhibits 77, 78 and 79. Could you  
15 look at Exhibit 77 and confirm that Exhibit 77 is a copy  
16 of the general conditions of the contract that were part  
17 of the contract between the town and Sciaba?

18 A. I believe they are.

19 Q. Can you go to Exhibit 78 and confirm that  
20 Exhibit 78 is a copy of the first volume of the project  
21 manual that was part of Sciaba's contract with the town?

22 A. Yes, it is.

23 Q. Can you take a look at Exhibit 79 and  
24 confirm that Exhibit 79 is a copy of Addendum No. 2 that

James Murray

04/29/2005

54

1 was distributed to bidders who were bidding for the  
2 contract that was ultimately awarded to Sciaba?

3 A. I believe it is.

4 Q. Could you take a look in the project  
5 manual -- if you need to take the rubber band off, you  
6 can because I'm going to ask you to open to some of the  
7 pages. Could you turn to the section that's called  
8 instructions to bidders.

9 A. Do you know what page it is on?

10 Q. You found it, okay. Could you turn to  
11 page four of the instructions to bidders in Exhibit 78  
12 and look particularly at the paragraph numbered G6. You  
13 see there there's some dates for substantial completion?

14 A. Yes.

15 Q. You found that? Okay. And in that  
16 project manual was part of the package that was sent out  
17 to bidders in mid-January 2002; correct?

18 A. I'm not sure of the dates but it is the  
19 package.

20 Q. So at the time that project manual was  
21 sent out to bidders, the proposed dates for substantial  
22 completion were October 31, 2003 for the building and  
23 June 15, 2004 for the parking lot and demolition;  
24 correct?

James Murray

04/29/2005

111

1 A. Not that I recall.

2 Q. I'm going to show you the document that  
3 was marked exhibit -- wait a minute.

4 (Document marked for identification  
5 as Exhibit No. 85.)

6 BY MS. GRIFFIN:

7 Q. I'm handing you another copy of the April  
8 23rd letter, this one having been marked Exhibit 85, and  
9 I direct your attention to the handwritten notes that are  
10 on there. Can you identify the handwriting in those  
11 notes?

12 A. No, I can't.

13 Q. Do you have any information about when the  
14 notes on Exhibit 85 were made?

15 A. No, I don't.

16 Q. Let me show you a document that was marked  
17 Exhibit 49. Never mind.

18 (Document marked for identification  
19 as Exhibit No. 86.)

20 (Pause.)

21 BY MS. GRIFFIN:

22 Q. All set?

23 A. Yes.

24 Q. Have you seen Exhibit 86 before?

James Murray

04/29/2005

117

1 E.J. Sciaba's financial stability.

2 Q. Do you recall Mr. Dore telling you  
3 anything else?

4 A. No.

5 Q. Did you talk to anybody else about the May  
6 21st meeting?

7 A. Mr. O'Neill.

8 Q. When did you talk to Mr. O'Neill about the  
9 May 21st meeting?

10 A. I believe again it was the following day.

11 Q. By phone?

12 A. Yes.

13 Q. What did Mr. O'Neill tell you about the  
14 May 21st meeting?

15 A. Pretty much the same comments I already  
16 made that E.J. Sciaba was not even on the radar screen  
17 yet and that the bonding company was going to look into  
18 their finances.

19 Q. Did you talk to anybody else about the May  
20 21st meeting?

21 A. No.

22 (Documents marked for identification  
23 as Exhibit No. 87 and 88.)

24 (Pause.)

James Murray

04/29/2005

118

1 BY MS. GRIFFIN:

2 Q. Have you looked at Exhibit 87?

3 A. Yes.

4 Q. Did the school building committee  
5 authorize Mr. McEnaney to send Exhibit 87?

6 MR. MCENANEY: Objection.

7 A. Yes.

8 Q. I'm sorry, I didn't hear your answer?

9 A. Yes.

10 Q. How long before July 2, 2003 did the  
11 school building committee authorize the sending of  
12 Exhibit 87?

13 MR. MCENANEY: Objection. Are you  
14 asking him about any conversations he had with me prior  
15 to sending this?

16 MS. GRIFFIN: No, I just asked him how  
17 long before July 22nd the authorization was given.

18 A. I don't recall.

19 Q. Did the Board of Selectmen separately  
20 authorize the sending of Exhibit 87 if you know?

21 MR. MCENANEY: Objection.

22 A. Not that I'm aware of.

23 Q. Can you tell me why Exhibit 87, the July  
24 2nd letter, was not sent until July 2nd?

James Murray

04/29/2005

119

1 MR. MCENANEY: Objection.

2 A. I don't know.

3 Q. Did the school building committee  
4 authorize the sending of Exhibit 88?

5 A. Yes.

6 Q. How long before July 23rd did the school  
7 building committee authorize the sending of Exhibit 88?

8 A. I don't recall.

9 Q. I'm going to show you now the document  
10 that was marked previously as Exhibit 58.

11 (Pause.)

12 Q. Have you seen Exhibit 58 before today?

13 A. I don't believe so.

14 Q. Before today you were aware that the  
15 surety was asserting that the payments that were released  
16 to Sciaba during the last ten days of May should not have  
17 been released; correct?

18 A. I'm aware of that, yes.

19 Q. When did you first learn of that?

20 A. I don't recall.

21 MS. GRIFFIN: Let's mark this as the  
22 next exhibit.

23 (Document marked for identification  
24 as Exhibit No. 89.)



James Murray

04/29/2005

120

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

(Pause.)

BY MS. GRIFFIN:

Q. Have you seen Exhibit 89 before?

A. Yes, I have.

Q. Is Exhibit 89 a copy of the minutes of the school building committee meeting held on September 10, 2003?

A. Yes, it is.

Q. And you attended that meeting; correct?

A. Yes.

Q. On the second page of Exhibit 89 you see there are two paragraphs numbered four?

A. Yes.

Q. would you take a look at the second paragraph number four.

(Pause.)

Q. Did you look at that?

A. Yes, I looked at it.

Q. Does that paragraph refresh your recollection about when you learned that the surety was claiming that the town should not have released payments to sciaba?

A. As to an exact time, no, it doesn't.

Q. well, certainly you had learned about it

James Murray

04/29/2005

139

1 A. I'm not sure.

2 Q. Who would know that?

3 A. The town accountant I would say.

4 Q. Would the town administrator know that?

5 A. Possibly.

6 MS. GRIFFIN: Let's mark this as the  
7 next exhibit.

8 (Document marked for identification  
9 as Exhibit No. 92.)

10 BY MS. GRIFFIN:

11 Q. Have you seen Exhibit 92 before?

12 A. Yes, I have.

13 Q. How soon after November 12 did you see  
14 Exhibit 92?

15 A. I don't recall.

16 Q. Was it just a matter of days?

17 A. I would say it was within a week or two  
18 time period.

19 Q. Now the town never signed the completion  
20 contract that accompanied the November 12 letter in  
21 Exhibit 92, did it?

22 A. That's correct.

23 Q. In fact the school building committee  
24 didn't convene a meeting to discuss the completion

James Murray

04/29/2005

141

1 Q. Did you have any discussions with members  
2 of the school building committee outside of a meeting  
3 concerning the completion contract that came with the  
4 November 12 letter?

5 A. Not that I'm aware of.

6 Q. Why did the town not sign the completion  
7 contract that came with Exhibit 92?

8 MR. MCENANEY: Objection. You can  
9 answer.

10 A. To the best of my knowledge the town  
11 cannot sign a contract which it does not have funds to  
12 pay.

13 Q. How much funds did the town have on hand  
14 as of November 12, 2003?

15 A. I can't answer that.

16 Q. Is that because you don't know?

17 A. That's correct.

18 MS. GRIFFIN: Let's mark this as the  
19 next exhibit.

20 (Document marked for identification  
21 as Exhibit No. 93.)

22 (Pause.)

23 BY MS. GRIFFIN:

24 Q. Have you seen Exhibit 93 before?

James Murray

04/29/2005

142

1 A. Yes, I have.

2 Q. Did the town authorize Mr. McEnaney to  
3 send Exhibit 93?

4 MR. MCENANEY: Objection. Again I  
5 think it's getting into discussions that occurred between  
6 the town and me regarding a particular letter which are  
7 off limits.

8 MS. GRIFFIN: Well, I disagree with  
9 that. I'm not asking about legal advice that was  
10 requested. I'm not asking about legal advice that was  
11 given. I'm asking whether this letter was authorized.

12 MR. MCENANEY: You're asking whether or  
13 not there was communications between the town and me  
14 which in my opinion are protected.

15 MS. GRIFFIN: I'm entitled to know  
16 whether you were speaking on behalf of the town when this  
17 letter was sent. That's not a privileged issue. It's  
18 not a privileged communication.

19 MR. MCENANEY: I disagree with that.  
20 You're asking him whether or not there was essentially a  
21 privileged communication between me and my client  
22 regarding this particular letter.

23 MS. GRIFFIN: Well, I'm not going to  
24 waste time during this deposition debating it with you.

James Murray

04/29/2005

143

1 I disagree and I'll reserve my rights.

2 BY MS. GRIFFIN:

3 Q. Did you see the text of Exhibit 93 before  
4 it went out?

5 MR. MCENANEY: Objection. You can  
6 answer yes or no.

7 A. I don't believe so.

8 Q. You saw it after it went out; correct?

9 A. Yes.

10 Q. Did the town voice any objection to  
11 Mr. McEnaney having sent Exhibit 93 out?

12 MR. MCENANEY: Objection. Don't answer  
13 that question.

14 Q. would you take a look at the spreadsheet  
15 that was an enclosure with Exhibit 93.

16 (Pause.)

17 Q. And do you see the section of the  
18 spreadsheet about three-quarters of the way down the page  
19 that says construction manager 115 hourly rate, hours per  
20 week 50, estimated number of weeks to complete 43 and  
21 estimated cost \$247,250?

22 A. Yes.

23 Q. Did the town actually incur fees to Dore  
24 and Whittier at that rate for Mr. Conway's time during

James Murray

04/29/2005

144

1 the completion of the work?

2 A. I don't know.

3 Q. Did the town enter into a new contract  
4 with Dore and Whittier after Fontaine was hired as the  
5 completion contractor?

6 A. I believe there was an amendment to Dore  
7 and Whittier's contract not a new contract.

8 Q. Was it in the form of a letter or did it  
9 look more like the printed contracts that we saw earlier?

10 A. I believe it was more of a letter form.

11 Q. Let me show you a document that was marked  
12 previous to this as Exhibit 66. Is that the letter that  
13 you're referring to as an amendment?

14 MR. MCENANEY: Can we go off the record  
15 for one second?

16 MS. GRIFFIN: All right.

17 (Discussion off the record.)

18 MS. GRIFFIN: While we were off the  
19 record counsel has indicated there is an actual amendment  
20 which the town will produce; correct?

21 MR. MCENANEY: That's fine.

22 Q. I'll withdraw that last question.

23 (Documents marked for identification  
24 as Exhibit Nos. 94 and 95.)

James Murray

04/29/2005

145

1 (Pause.)

2 BY MS. GRIFFIN:

3 Q. I've handed you Exhibits 94 and 95 which  
4 are two different copies of a letter dated November 21,  
5 2003. Have you seen either of them before?

6 A. I believe I've seen them both.

7 Q. whose handwriting -- other than the  
8 signature on the letter whose handwriting appears on  
9 Exhibit 94?

10 A. I don't know that.

11 Q. But you have seen Exhibit 95 as well which  
12 has a two-page enclosure; is that right?

13 A. Yes.

14 Q. Okay. And how soon after November 21st  
15 did you receive either Exhibit 94 or 95?

16 A. Exact date I don't know but I would say  
17 within a couple weeks.

18 (Documents marked for identification  
19 as Exhibit Nos. 96, 97 and 98.)

20 (Pause.)

21 BY MS. GRIFFIN:

22 Q. Can you identify Exhibit 96 for us please?

23 A. It's the completion contract to Fontaine  
24 Brothers.

James Murray

04/29/2005

146

1 Q. And that's signed by both the town and  
2 Fontaine; correct?

3 A. Correct.

4 Q. And can you identify Exhibit 97 please?

5 A. It's the performance bond from Fontaine  
6 Brothers.

7 Q. And Exhibit 98 can you identify that?

8 A. It's a notice to proceed to Fontaine  
9 Brothers.

10 MS. GRIFFIN: Let's mark this as the  
11 next exhibit.

12 (Document marked for identification  
13 as Exhibit No. 99.)

14 (Pause.)

15 BY MS. GRIFFIN:

16 Q. Can you identify Exhibit 99 please?

17 A. It's meeting minutes from a school  
18 building committee meeting.

19 Q. Dated December 17, 2003?

20 A. Correct.

21 Q. Did you attend that meeting?

22 A. Yes, I did.

23 Q. Do you remember the meeting?

24 A. Yes.



## **EXHIBIT 12**

LEONARD KOPELMAN  
DONALD G. PAIGE  
ELIZABETH A. LANE  
JOYCE FRANK  
JOHN W. GIORGIO  
BARBARA J. SAINT ANDRE  
JOEL B. BARD  
JOSEPH L. TEHAN, JR.  
THERESA M. DOWDY  
DEBORAH A. ELIASON  
RICHARD BOWEN  
DAVID J. DONESKI  
JUDITH C. CUTLER  
KATHLEEN E. CONNOLLY  
DAVID C. JENKINS  
MARK R. REICH

EDWARD M. REILLY  
DIRECTOR WESTERN OFFICE

WILLIAM HEWIG III  
JEANNE S. MCKNIGHT  
KATHLEEN M. O'DONNELL  
SANDRA M. CHARTON

**KOPELMAN AND PAIGE, P. C.**

ATTORNEYS AT LAW

31 ST. JAMES AVENUE

BOSTON, MASSACHUSETTS 02116-4102

(617) 556-0007

FAX (617) 654-1735

PITTSFIELD OFFICE

(413) 443-6100

NORTHAMPTON OFFICE

(413) 585-8632

WORCESTER OFFICE

(508) 752-0203

PATRICIA A. CANTOR  
THOMAS P. LANE, JR.  
BRIAN W. RILEY  
MARY L. GIORGIO  
DARREN R. KLEIN  
THOMAS W. MCENANEY  
JONATHAN M. SILVERSTEIN  
KATHARINE GOREE DOYLE  
GEORGE X. PUCCI  
LAUREN F. GOLDBERG  
JASON R. TALERMAN  
JEFFREY A. HONIG  
MICHELE E. RANDAZZO  
GREGG J. CORBO  
RICHARD T. HOLLAND  
LISA C. ADAMS  
ELIZABETH R. CORBO  
MARCELINO LA BELLA  
VICKI S. MARSH  
JOHN J. GOLDBROSEN  
SHIRIN EVERLETT  
BRIAN E. GLENNON, II  
JONATHAN D. EICHMAN  
LAURA H. PAWLE  
TODD A. FRAMPTON  
JACKIE COWIN

July 2, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
AND FIRST-CLASS MAIL

NO. 7099 3220 0009 7561 7414

Deborah Griffin, Esq.  
Holland & Knight, LLP  
10 St. James Avenue  
Boston, MA 02116

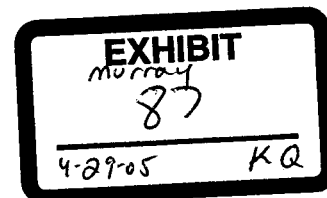
NO. 7099 3220 0009 7561 7407

Bert J. Capone, Esq.  
Cetrulo & Capone  
2 Seaport Lane  
Boston, MA 02210

Re: Notice of Default Under General Contract  
Project: North Brookfield Junior/Senior High School Project  
Performance Bond No. 3SE057856  
Principal: E.J. Sciaba Contracting Company, Inc.  
Owner: Town of North Brookfield, Massachusetts  
Contract Date: April 19, 2002  
Bond Amount: \$13,222,000.00

Dear Counsel:

As you know, this firm serves as Town Counsel for the Town of North Brookfield, Massachusetts. Please be advised that pursuant to paragraph 3.1 of the Performance Bond, the Town of North Brookfield is considering declaring a contractor default on the above-referenced project and hereby requests a meeting with E.J. Sciaba Contracting Company, Inc. ("Sciaba") and American Manufacturers Mutual Insurance Company ("AMMIC"), as surety on the above-



AM 17399

KOPELMAN AND PAIGE, P.C.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
AND FIRST CLASS MAIL

Deborah Griffin, Esq.

Bert J. Capone, Esq.

July 2, 2003

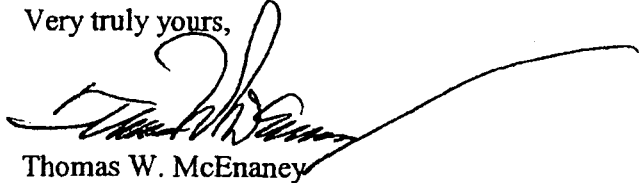
Page 2

referenced project. This intention to declare a contractor default is based upon Sciaba's voluntary default, as set forth in its May 30, 2003 letter, a copy of which is attached hereto. The Town requests a meeting with Sciaba and AMMIC as soon as possible.

The Town hereby reserves all statutory and contractual rights to remedy Sciaba's breach, including, but not limited to, the termination of Sciaba's contract in accordance with the applicable provisions of the general contract. The Town further reserves all its rights under the contract documents.

If you have any questions, please do not hesitate to contact me. The Town looks forward to your prompt reply.

Very truly yours,



Thomas W. McEnaney

TWM/rlf

Enc.

cc: Board of Selectmen  
School Building Committee  
Mr. Lee P. Dore, Assoc. AIA, CSI

195659/NBRO/0017

## **EXHIBIT 13**

**HOLLAND & KNIGHT LLP**

10 St. James Avenue  
Boston, Massachusetts 02116

617-523-2700  
FAX 617-523-6850  
<http://www.hklaw.com>

Amnapolis  
Atlanta  
Bethesda  
Boston  
Bradenton  
Chicago  
Fort Lauderdale  
Jacksonville  
Lakeland  
Los Angeles  
Miami  
New York  
Northern Virginia

Orlando  
Portland  
Providence  
San Antonio  
San Francisco  
Seattle  
St. Petersburg  
Tallahassee  
Tampa  
Washington, D.C.  
West Palm Beach

International Offices: São Paulo  
Caracas\* Tel Aviv\*  
Helsinki Tokyo  
Mexico City  
Rio de Janeiro \*Representative Offices

June 5, 2003

**DEBORAH S. GRIFFIN**  
617-305-2044

Internet Address:  
[deborah.griffin@hklaw.com](mailto:deborah.griffin@hklaw.com)

**VIA FIRST CLASS CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Thomas W. McEnaney, Esq.  
Kopelman & Paige, P.C.  
31 St. James Avenue, 7<sup>th</sup> Floor  
Boston, MA 02116

*Re: Notice of Default Under General Contract*  
*Project: North Brookfield Junior / Senior*  
*High School Project*  
*Performance Bond No.: 3SE057856*  
*Principal: E.J. Sciaba Contracting Company, Inc.*  
*Owner: Town of North Brookfield, Massachusetts*  
*Contract Date: April 19, 2002*  
*Bond Amount: \$13,222,000.00*

Dear Mr. McEnaney:

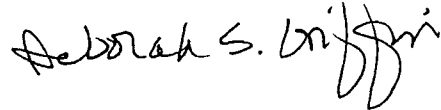
On behalf of American Manufacturers Mutual Insurance Company ("AMMIC"), I am responding to your letter of July 2, 2003. Please be advised that AMMIC waives the requirement of a meeting and of the passage of twenty (20) days after receipt of the initial letter under paragraphs 3.1 and 3.2 of the above-referenced Performance Bond, which are conditions precedent to the

Thomas W. McEnaney, Esq.  
July 3, 2003  
Page 2

owner declaring a Contractor Default and formally terminating the Contractor's right to complete the contract. Please let me know if you receive a similar waiver from the contractor.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in dark ink, appearing to read "Deborah S. Griffin". The signature is fluid and cursive, with the last name "Griffin" being more prominent.

Deborah S. Griffin

DSG/bsw: BOS1 #1354377 v1  
431261.00002

cc: Bert J. Capone, Esq.  
Stephen J. Beatty, Esq. (w/encl.)  
Richard P. Anastasio, P.E. (w/encl.)

## **EXHIBIT 14**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-40266 CBS

AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY,

Plaintiff

v.

TOWN OF NORTH BROOKFIELD,

Defendant

TOWN OF NORTH BROOKFIELD'S  
ANSWERS TO PLAINTIFF'S FIRST SET  
OF INTERROGATORIES TO DEFENDANT

I. GENERAL OBJECTIONS

A. Defendant objects to each and every interrogatory set forth in Plaintiff's First Set of Interrogatories (the "Interrogatories") to the extent that any such interrogatory requests information which is protected by the attorney/client privilege.

B. Defendant further objects to each and every interrogatory that requests information and materials prepared in anticipation of litigation or for trial by or for Defendant and its representatives, attorneys, and agents, or requests the Defendant to disclose mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of Defendant concerning this litigation. Such information and materials are privileged as work product, and Defendant is not required to produce said information except as provided under Rule 26(b)(3) of the Federal Rules of Civil Procedure.

C. Defendant objects to each and every interrogatory that requests information that is not relevant to the subject matter involved in the pending action and does not come within Rule 26(b) of the Federal Rules of Civil Procedure.



INTERROGATORY NO. 11:

Identify and describe in detail all actions taken by the Town, if any, on or after August 20, 2003, to obtain funding, other than from AMMIC, for the completion of the Project and for professional fees and expenses associated therewith, in the event AMMIC was or is not liable for the full amount incurred by the Town. Include in your answer any and all actions the Town considered taking for that purpose but did not take; the Town's reasons for not taking actions considered; and identify all communications concerning such actions taken or considered but not taken.

ANSWER NO. 11:

OBJECTION OF COUNSEL: Interrogatory Number 11 is overly broad, vague, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence and seeks information protected by the attorney-client privilege and work-product doctrine.

Notwithstanding this objection and without waiving the same, the Town states that it made a claim on the performance bond furnished by Sciaba and issued by AMMIC. The performance bond provides that the surety is obligated for the responsibilities of the contractor for the correction of defective work and completion of the construction contract; additional legal, design professional, project management and delay costs resulting from the contractor's default and resulting from the actions or failure to act of the surety under paragraph 4 of the performance bond; and liquidated damages, or if no liquidated damages are specified in the construction contract, actual damages caused by the delayed performance or nonperformance of the contractor. The Town did not contemplate any other funding options as it did not expect that AMMIC would take actions to avoid its clear liability under the performance bond given Sciaba's voluntary default on the project.

INTERROGATORY NO. 12:

State the basis for the Town's assertion that, as a result of Sciaba's default, it is entitled to \$674,607.24 in additional design and project management fees from AMMIC.

ANSWER NO. 12:

The performance bond, in paragraph 6.2, provides for the recovery of additional design and project management fees incurred as a result of the contractor's delayed performance or nonperformance.

INTERROGATORY NO. 13:

State the basis for the Town's claim that AMMIC is responsible for charges amounting to \$16,719.40 from Keyspan Energy.

ANSWER NO. 13:

Sciaba incurred these costs with Keyspan Energy. Under paragraph 3.4.1 of the general conditions of the contract, Sciaba is responsible for providing labor, materials, water, heat, utilities, transportation and other facilities and services necessary to complete the project unless otherwise provided in the contract. The contract does not otherwise provide that a party other than Sciaba is responsible for heat and utilities used during the course of construction. Therefore, Sciaba, and now AMMIC, as performance bond surety, is responsible for these charges.

INTERROGATORY NO. 14:

State the basis for the Town's assertion in Count II of the Counterclaim that AMMIC misrepresented "pertinent facts or provisions" relating to any bond coverage, including in your answer, without limitation, an identification and detailed description of specific facts, actions, omissions, communications, documents and persons that concern or comprise any such

misrepresentation.

ANSWER NO. 14:

Please refer to Answers to Interrogatories Nos. 11 and 12. Despite the clear language of the performance bond, AMMIC has refused to provide for the cost of correcting the defective work and completing the contract work and has not compensated the Town for its additional legal, design professional, project management, and delay costs, and liquidated damages.

INTERROGATORY NO. 15:

State the basis for the Town's assertion in Count II of the Counterclaim that AMMIC "failed to acknowledge and act reasonably promptly" with respect to any Performance Bond claims or communications; including in your answer, without limitation, an identification and detailed description of specific facts, actions, omissions, communications, documents and persons that concern or comprise any such failure.

ANSWER NO. 15:

On or about April 23, 2003, the Town notified AMMIC that Sciaba was behind schedule and that it did not appear to the Town that Sciaba was able to complete the project in a timely manner. At a meeting on May 21, 2003, AMMIC's representatives indicated that it appeared that Sciaba was having a cash flow problem but that AMMIC did not foresee that Sciaba would default. On or about June 5, 2003, counsel for AMMIC forwarded to counsel for the Town a copy of a letter dated May 30, 2003 from Sciaba indicating that Sciaba was declaring a voluntary default, for convenience, on the project.

On or about July 2, 2003, the Town notified AMMIC that it was considering declaring a contractor default and requested a meeting with Sciaba and AMMIC in accordance with the requirements of paragraph 3.1 of the performance bond. On or about July 5, 2003, AMMIC

responded to the Town's letter indicating that it waived the requirements in paragraphs 3.1 and 3.2 of the performance bond of a meeting and the passage of 20 days prior to the Town's termination of the contractor's right to complete the contract. On or about July 23, 2003, the Town provided formal notice to AMMIC that it had declared a contractor default on the part of Sciaba and formally terminated Sciaba's right to complete the contract.

Following the declaration of contractor default, the Town and AMMIC negotiated a completion agreement that was acceptable to both parties, whereby a completion contractor would complete the building by April 30, 2004 and the phase IV work by August 1, 2004. AMMIC subsequently altered the terms of the agreement unilaterally and without consulting the Town. AMMIC set several deadlines for its selection of a final completion contractor, all of which it failed to meet. AMMIC did not open bids for the selection of a completion contractor until on or about October 8, 2003.

Despite several requests from the Town to tender a completion contractor, AMMIC did not do so until November 12, 2003, six (6) months after Sciaba notified AMMIC of its voluntary default on the project. However, AMMIC failed to provide the Town with sufficient funds to enter into the completion contract until December 3 and 15, 2003, despite the fact that the Town notified AMMIC that it could not legally enter into the completion contract until it had sufficient funds on hand to satisfy the contract price. The Town executed a completion contract with Fontaine on December 15, 2003.

The Town has produced to AMMIC documentation of the additional costs incurred by the Town as a result of Sciaba's breach. Despite AMMIC's clear obligation under the terms of the performance bond to compensate the Town for the costs of the completion contract, as well as the additional costs incurred by the Town as a result of Sciaba's breach, AMMIC has still

failed to and refused to fully compensate the Town in accordance with its obligations under the bond.

INTERROGATORY NO. 16:

State the basis for the Town's assertion in Count II of the Counterclaim that AMMIC "failed to adopt and implement reasonable standards for the prompt investigation of claims under the performance bond" and "refuse[ed] to pay claims with conducting a reasonable investigation"; including in your answer, without limitation, an identification and detailed description of specific facts, actions, omissions, communications, documents and persons that concern or comprise any such failure or refusal.

ANSWER NO. 16:

Please refer to Answers to Interrogatories Nos. 14 and 15. The Town further states that discovery is ongoing and hereby reserves the right to seasonably supplement its response to this Interrogatory.

INTERROGATORY NO. 17:

State the basis for the Town's assertion in Count II of the Counterclaim that AMMIC "failed to affirm or deny coverage within a reasonable time after proof of loss statements have been completed" and that AMMIC "fail[ed] to provide promptly a reasonable explanation of the basis in the performance bond"; including in your answer, without limitation, an identification and detailed description of specific facts, actions, omissions, communications, documents and persons that concern or comprise any such failure or refusal.

ANSWER NO. 17:

Please refer to Answers to Interrogatories Nos. 14 through 16. The Town further states that discovery is ongoing and hereby reserves the right to seasonably supplement its response to